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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/087,449	02/28/2002	Michael L. Blomquist	9015.141US01	9068

23552 7590 11/29/2006

MERCHANT & GOULD PC  
P.O. BOX 2903  
MINNEAPOLIS, MN 55402-0903

EXAMINER

CABRERA, ZOILA E

ART UNIT	PAPER NUMBER
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. 2125

DATE MAILED: 11/29/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/087,449

Applicant(s)

BLOMQUIST, MICHAEL L.

Examiner

Zoila E. Cabrera

Art Unit

2125

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 13 September 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-25 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input checked="" type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. <u>10/6/06</u> |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application   |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### DETAILED ACTION

1. Claims 1-25 are presented for consideration.

#### ***Claim Rejections - 35 USC § 102***

2. Claims 1-25 are rejected under 35 U.S.C. 102(e) as being anticipated by **Estes et al. (US 2003/0114836)**.

Claims 1-25 are so broad as to read in **Estes**, who discloses a medication delivery system and monitor comprising:

With respect to claims 1-7, **Estes** discloses,

- a method of programming an ambulatory infusion pump from a computer, the ambulatory infusion pump programmed to execute a delivery program, the delivery program being driven by operating parameters (Fig. 1-2), the method comprising: generating a table on the computer, the table containing a row, the row having a plurality of cells, each cell in the row relating to a different operating parameter for the delivery program (Fig. 3A, element 300); entering an operating parameter into at least one of the cells (Fig. 3A, Table 300 with corresponding operating parameters and cells such as Max Bolus: 5.7U, Time Display: 24 Hr., Beep Volume: 3; Page 6, [0054]); and downloading the operating parameters into the pump (Fig. 2, bidirectional communication with Computer 132 and the corresponding Infusion Device or pump. *Estes teaches that the programming can either be entered directly into the infusion device using the input device 108 or transferred from the computer 132, see Pages 3-4, [0035].*)

- the table includes a plurality of rows, each row relating to a different set of operating parameters, each set of operating parameters defining a different delivery schedule for the pump (Fig. 5, Alarm/Event Marker Table);
- at least one cell within each row is configured for a unique identifying name, wherein the unique identifying name identifies the operating parameters in the same row of as the unique identifying name (Fig. 5, i.e., Susp. On at 12:57 AM);
- the pump has memory and runs a delivery program and downloading the operating parameters includes downloading the operating parameters into the pump includes downloading the operating parameters into the memory (0035, lines 1-7; Fig. 1, element 106; Fig. 2, element 132, 100);
- the pump is programmed to run a delivery program, the method further comprising running the delivery program, thereby executing the operating parameters (Fig. 6);
- the pump has memory and is programmed to run a delivery program, the method further comprising: downloading all rows of operating parameters to the infusion pump; and storing the operating parameters in the memory (0035, lines 1-7; Fig. 1-2, elements 106, 132; Fig. 3A, element 300);
- 7. The method of claim 6 further comprising: selecting one unique identifying name (Fig. 6, i.e., BOLUS, SUSPEND, or BASAL); and running the delivery program wherein the delivery program executes the operating parameters identified by the selected unique identifying name (Fig. 6, i.e., SUSPEND).

As for claim 8, **Estes** discloses

- a method of operating a pump, the pump having a memory and a pump mechanism, the method comprising: receiving from a computer, a plurality of data sets, each data set containing a plurality of operating parameters (Fig. 3A, element 300; Fig. 2, elements 100,132; 0035, lines 1-7; Fig. 5, Alarm/Event Marker Table; Page 6, [0060], lines 1-6, i.e., "The graph is derived from carbohydrate consumption events from **the event marker table that have been logged by the user**"; Page 7, [0063], lines 1-13, i.e., "the time change is displayed in either 12 or 24 hr format **depending on user's settings**"; [0064], lines 13-15, i.e., "At least **some of these events can be taken as inputs to the bolus estimator 128** in calculating an insulin dosage"); storing the plurality of data sets in memory (Fig. 1, element 106); selecting one of the plurality of data sets (fig. 6, SUSPEND, BOLUS, BASAL); and running a delivery program wherein the delivery program executes the operating parameters in the selected one of the plurality of data sets, the operating parameters defining a delivery schedule for controlling the pump mechanism (Fig. 6, BOLUS DELIVERY).

With respect to claims 9-11, **Estes** discloses,

- an apparatus for programming an infusion pump, the pump programmed to execute a delivery program, the delivery program programmed to process operating parameters, the operating parameters defining operating of the pump (Fig. 6), the apparatus comprising: a data port; a data entry device (Fig. 2, elements 132, 130); and a processor in data communication with the data port and the data entry device (Fig. 1, element 102), the processor programmed to (a)

generate a table, the table containing a row, the row having a plurality of cells, each cell in the row relating to a different operating parameter for the delivery program (Fig. 3A, element 300; Fig. 5, Alarm/Event Marker Table); (b) receive data from the data entry device (Page 6, [0060], lines 1-6, i.e., "The graph is derived from carbohydrate consumption events from **the event marker table that have been logged by the user**"; Page 7, [0063], lines 1-13, i.e., "the time change is displayed in either 12 or 24 hr format **depending on user's settings**"; [0064], lines 13-15, i.e., "At least **some of these events can be taken as inputs to the bolus estimator 128** in calculating an insulin dosage") and display the data in one or more of the cells (Fig. 1, elements 108, 114; Fig. 5, Alarm/Event Marker Table; Page 6, [0059]-[0061]); and (c) download the operating parameters displayed in the cells to the infusion pump (Fig. 5, i.e., Susp. On 2:00 pm; Page 6, [0060], lines 6-8, i.e., "The event markers can be logged into the pump and stored for later downloading or entered directly into the running software program");

- the processor is further programmed to generate a plurality of rows in the table, each row relating to a different set of operating parameters, each set of operating parameters defining a different delivery schedule for the pump (Fig. 5, Alarm/Event Marker Table);
- each row in the table includes at least one cell configured to receive a unique identifying name, wherein the unique identifying name identifies the operating

parameters in the same row as the unique identifying name (Fig. 5, i.e., Susp. On at 12:57 AM).

As for claims 12-18, **Estes** discloses,

- a method of operating an infusion pump for delivering a therapeutic agent into the body of a user, the infusion pump being programmable and including memory, the infusion pump being programmed to run a delivery program, the delivery program controlling the infusion pump to deliver the therapeutic agent according to a delivery schedule (Figs. 1-2, 5 and 6), the method comprising: storing a data set in the memory, the data set including a set of operating parameters defining a delivery schedule, at least one of the operating parameters being a uniquely identifying name (Fig. 1, element 106, Fig. 6, BOLUS, SUSPEND, BASAL; Page 6, [0058]); selecting the uniquely identifying name thereby assigning the set of operating parameters identified by the uniquely identifying name to the delivery program (0072, lines 1-9 and lines 15-22); and running the delivery program, the delivery program executing the set of operating parameters thereby controlling the infusion pump to deliver the therapeutic agent according to the delivery schedule defined by the set of operating parameters (0073, lines 1-8; 0072, lines 1-9);
- downloading the data set to the pump from a computer (Fig. 2, elements 132, 100);

- storing, a data set in the memory, includes storing two or more data sets in the memory, each data set including a set of operating parameters defining a delivery schedule (Fig. 3A, element 300; Fig. 6);
- generating a menu, the menu including at least one menu item corresponding to one of the unique identifying names; and wherein selecting the unique identifying name includes selecting the menu item (Fig. 6, MAIN MENU).
- storing a data set in the memory includes storing a plurality of data sets in memory, each data set including a set of operating parameters defining a separate delivery schedule (0074, lines 8-17);
- generating a menu includes generating a menu having at least one menu item corresponding to a unique identifying name from one data set and at least one menu item corresponding to a unique identifying, name from another data set (Fig. 6);
- switching execution of the delivery program from the set of operating parameters in one data set to the set of operating parameters in another data set (0074, lines 1-17).

As for claims 19-25, **Estes** discloses,

- an infusion pump comprising: a pump mechanism (Fig. 2, element 100); memory storing a data set (Fig. 1, element 106), the data set including a set of operating parameters defining a delivery schedule (Fig. 6, Bolus Delivery), at least one of the operating parameters being a uniquely identifying name (Fig. 6, BOLUS, SUSPEND, BASAL); and a processor arranged to control the pump mechanism



and in data communication with the memory (Fig. 1, elements 102, 106, 124), the processor being programmed to assign the set of operating parameters to the delivery program upon selection of the uniquely identifying name and to execute the set of operating parameters thereby controlling the pump mechanism to deliver the therapeutic agent according to the delivery schedule (Fig. 6, i.e., BOLUS, SUSPEND, BASAL: 0065, lines 1-20, 0074, lines 8-17);

- a data port, the processor being further arranged to control downloading of the data set and storage of the data set into tile memory (Fig. 2, elements 132, 130, 100);
- the memory stores two or more data sets in the memory, each data set including a set of operating parameters defining a delivery schedule (Fig. 3A, element 300; Fig. 6);
- the processor is further programmed to generate a menu, the menu including at least one menu item corresponding to one of the unique identifying names, wherein selecting the menu item is at least one step in beginning execution of the delivery program (Fig. 6, MAIN MENU);
- the memory stores two or more data sets, each data set including a set of operating parameters defining a separate delivery schedule (0074, lines 8-17);
- the processor is further programmed to generate a menu, the menu including at least one menu item corresponding to a unique identifying name from one data set and at least one unique identifying name from another data set (Fig. 6);

- the processor is further programmed to switch execution of the delivery program from the set of operating parameters in one data set to the set of operating parameters in another data set (0074, lines 1-17).

### ***Response to Arguments***

3. Applicant's arguments filed April 21, 2005 have been fully considered but they are not persuasive.

As for claims 1-11, in response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., entering **pump** parameters into a table **on a user interface** and then downloading those pump parameters into a pump) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Estes discloses "entering an operating parameter into at least one of the cells" (Fig. 3A displays operating parameters in corresponding cells such as Beep Volume: 3; Max Basal 23 U/H; Remote Control: ON; etc. Please note that Estes suggests that the programming can be done from a remote RF programmer 110 or Computer 132; Fig. 2, [0040]; [0035]).

With respect to claim 12-23, Applicant contends that Estes does not disclose that the uniquely identifying name is a part of the data set. Examiner disagrees because Estes teaches selecting or assigning the name of a function (Fig. 6, i.e., SUSPEND).

Art Unit: 2125

Estes further teaches that the uniquely identifying name, i.e., SUSPEND, is a part of the data set (Page 8, [0073], i.e., *Upon selecting the suspend function, the user is presented with a menu to select the period for suspension.* Therefore, the data set corresponds to the period for suspension). Please note that the name SUSPEND identifies the data set that corresponds to the period of suspension.


**Conclusion**

4. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning communication or earlier communication from the examiner should be directed to Zoila Cabrera, whose telephone number is (571) 272-3738. The examiner can normally be reached on M-F from 8:00 a.m. to 5:30 p.m. EST (every other Friday).

If attempts to reach the examiner by phone fail, the examiner's supervisor, Leo Picard, can be reached on (571) 272-3749. Additionally, the fax phones for Art Unit 2125 are (571) 273-8300. Any inquiry of a general nature or relating to the status of this application should be directed to the group receptionist at (703) 305-9600.

Zoila Cabrera  
Primary Examiner  
11/22/06

  
ZOILA CABRERA  
PRIMARY EXAMINER  
TECHNOLOGY CENTER 2100  
11/22/06